

**REMARKS**

In the Office action mailed on April 14, 2006, claims 1-4, 6-15, and 17-21 were rejected under 35 U.S.C. 102; claims 5 and 16 were rejected under 35 U.S.C. 103; and claims 1-24 were restricted into Group I (claims 1-21) and Group II (claims 22-24).

**Amendment to the Specification**

The amendment to the paragraph at page 13, lines 3-13 of the specification was made for proposes of clarity and is supported by claim 5 of the application as originally filed.

**Amendments to the Claims**

Claims 1-24 are pending in the application. With this Amendment, claims 1 and 5 are amended, claims 4 and 22-24 are cancelled, and new claims 25-27 are added.

The amendment to claim 1 is supported by the application as originally filed. See, e.g., claim 4 and page 13, lines 6-10.

Claim 5 is amended to correct a mistype by replacing the term "storage" with the term "stored."

The non-elected claims 22-24 are cancelled without prejudice or disclaimer and Applicants reserve the right to file a divisional application directed to the subject matter of these claims at a later date.

New claim 25 is supported by the application as originally filed. See, e.g., claim 4 and page 13, lines 6-10.

New claim 26 is supported by the application as originally filed. See, e.g., claim 23.

New claim 27 is supported by the application as originally filed. See, e.g., original claim 24.

**Restriction Under 35 U.S.C. 121**

Claims 1-24 were restricted under 35 U.S.C. 121 into separate claim groups 1-21 (Group I) and 22-24 (Group II). During a telephone conversation with the Examiner on April 4, 2006 Applicants provisionally elected claims 1-21 of Group I with traverse. Applicants affirm this election and cancel claims 22-24 of Group II.

**35 U.S.C. 102 Rejections**

Claims 1-4, 6-15, and 17-21 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,759,653 (hereinafter "Collette et al."). With this Amendment, claim 1 has been amended and claim 4 has been cancelled. Applicants respectfully submit that amended claims 1-3, 6-15, and 17-21 are accordingly in condition for allowance.

As amended, independent claim 1 recites a method for forming a plastic container, wherein the plastic container resulting from the method has an oxygen scavenging property that is activated *after* filling the container with an aqueous fluid. Unlike plastic containers of the present invention, plastic containers formed using conventional prior art methods typically require the use of costly storage techniques to prevent oxygen-scavenging properties of the plastic containers from being consumed before being filled with product. These storage techniques may include, for example, storage under nitrogen gas. Plastic containers produced using the method of the present invention, however, may be stored in atmospheric conditions, whereby the oxygen scavenging properties of the plastic containers are activated after being filled with product. None of the cited references teach a plastic container produced using a method as recited in claim 1 having an oxygen scavenging property that is activated after filling.

Contrary to the assertions of the Office Action, Collette et al. does not teach a method for forming a plastic container that has an oxygen scavenging property that is activated after filling the container with an aqueous fluid. Rather, Collette et al. teaches a method for forming a plastic container that includes an oxygen scavenger that is activated *before* filling the container with product such as an aqueous fluid. For example, Collette et al. states that "[a]fter

activation, the focus is on filling the package while the package still retains a high percentage of its oxygen scavenging power.” (See col. 2, lines 51-54).

The Office Action at page 4 cites Collette et al. as “teach[ing] that the barrier properties of the containers are activated after the container is filled with an aqueous fluid.” Applicants respectfully traverse this assertion. The passage cited in support of this assertion (i.e., col. 2, lines 44-51) is included in the “Background of the Invention” section to summarize the teachings of another reference (U.S. Pat. No. 5,025,052 – hereinafter “Zenner”), and is not directed to the plastic container of Collette et al. Even *arguendo* if the passage discussing the teachings of Zenner supports the proposition for which it is cited in the Office Action (i.e., that barrier properties of a container are activated after filling of the container with an aqueous fluid), the specific teachings of Collette et al. teach the exact opposite (i.e., activating an oxygen scavenger prior to filling).

Moreover, Collette et al. seeks to provide a plastic container having *accelerated* activation of an oxygen scavenger of the container before filling the container with product. (See, e.g., the abstract). To achieve this accelerated activation of the oxygen scavenger before filling the plastic container, Collette et al. teaches “including post consumer polyethylene terephthalate (PC-PET) in an amount effective to accelerate activation of the oxygen scavenger.” (See col. 13, lines 59-62). Furthermore, to prevent the activated oxygen scavenger from being consumed between activation and filling, Collette et al. teaches shielding the activated oxygen scavenger using layers of material such as, for example, EVOH to prevent the activated oxygen scavenger from being consumed by oxygen before filling.

As discussed above, Collette et al. does not teach a method for forming a fluid container that has an oxygen scavenging property activated after filling, but rather teaches the exact opposite (i.e., accelerated activation of an oxygen scavenger before filling). Therefore, Collette et al. does not disclose each and every element of amended claim 1 and does not constitute an anticipatory reference with respect to claim 1. Applicants respectfully submit that amended independent claim 1, and claims 2-3, 6-15, and 17-21 which depend therefrom,

are accordingly in condition for allowance. Reconsideration and notice to this effect is respectfully requested.

**35 U.S.C. 103 Rejections**

Claims 5 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Collette et al. in view of U.S. Pat. No. 5,034,252 (hereinafter Nilsson et al.). Applicants respectfully submit that in light of amended claim 1, which is in condition for allowance, the rejection of claims 5 and 16 are moot. As such, Applicants respectfully submit that claim 5 and 16 stand in condition for allowance. Reconsideration and notice to this effect is respectfully requested.


**CONCLUSION**

In view of the foregoing, claims 1-3, 5-21, and 25-27 are in condition for allowance. A notice to that effect is respectfully requested. The Commissioner is authorized to charge any additional fees associates with this paper or credit any overpayment to Deposit Account No. 50-2070.

Respectfully submitted,

VALSPAR SOURCING, INC.

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By: 

Andrew A. DeMaster, Reg. No. 57326  
1101 South Third Street  
Minneapolis, MN 55415  
Telephone: (612) 851-7281  
Fax: (612) 375-7313